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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re R.S. et al., as Persons Coming Under
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

D.S.,

Defendant and Appellant.

G042610

(Super. Ct. Nos. DP017513,
DP017514, DP017515
& DP017516)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Caryl Lee,
Judge. Affirmed.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant
and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen, Senior Deputy, and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

* * *

In August 2009 this court considered an appeal filed by D.S. (Mother) regarding the juvenile court's jurisdictional and dispositional orders regarding her five children (15-year-old boy, 9-year-old boy, 5-year-old girl, 3-year-old girl, and 2-year-old girl).¹ (*In re J.S.* (Aug. 18, 2009, G041354) [nonpub. opn.].) We concluded there was ample evidence supporting the juvenile court's decision to sustain the petition pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b).² (*In re J.S., supra*, G041354.) Specifically, the evidence (testimony and photographs) proved Mother had been physically and emotionally abusive for many years. She denied the abuse occurred, and she used fear tactics and threats of abandonment to convince her children to lie about the abuse. J.J., father of some of the children (Father) was also a party to the prior appeal, and we found merit with his claim concerning compliance with the Indian Child Welfare Act (25 U.S.C. § 1901 et. seq.). (*In re J.S., supra*, G041354.) However, Father is not a party to this appeal and his prior claims are not relevant to the contentions before us now.

Mother appeals from the juvenile court's findings and orders made at the six-month review hearing. The court ordered 9-year-old boy, 3-year-old girl, and 2-year-old girl (hereafter collectively referred to as "the minors") remain in the care of their

¹ The children in this case have unique names. To provide protective nondisclosure, use of initials was considered. But this was determined to be confusing and unmanageable. For the sake of clarity and confidentiality, the children are referred to only by gender and age in this opinion.

² All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

maternal great aunt, T.S., in Arizona. In addition, the court ordered 5-year-old girl to remain in the custody of her father, R.S., under a plan of family maintenance in Arizona. Mother did not appeal the orders terminating services and setting a permanency hearing for 15-year-old boy. On appeal, Mother asserts there was insufficient evidence of a substantial risk of detriment if the other children were returned to her care. We disagree and affirm the juvenile court's orders.

I

We will incorporate by reference the lengthy facts outlined in our prior opinion. (*In re J.S.*, *supra*, G041354.) Suffice it to say, the children were detained in September 2008 due to allegations of ongoing physical abuse. Initially, Mother tried to hide from the social workers, and thereafter attempted to convince the children to lie about the abuse. However, once the children had spent some time away from Mother and experienced a safe and secure home, they disclosed to social workers and their foster parents the cruel abuse they had endured.

Mother had a prior history of child welfare services in Arizona and California. In 2002, there was a substantiated report from Arizona's child protective services concluding Mother had hit 15-year-old boy (when he was eight years old) with an extension cord. The child had five to 10 marks on his back as well as extensive bruises on his thigh, hip, back, and buttocks. In 2006, Arizona police investigated a report of general neglect after the same boy was reported missing. Mother told police her son had run away after she confronted him about touching his sister "in her diaper area." In 2007, the Orange County Social Services Agency (SSA) investigated reports concerning possible sexual abuse of 9-year-old boy by 15-year-old boy, and general neglect of all the children. SSA determined the sexual abuse report to be unfounded and the general neglect inconclusive. Later that year, Irvine police investigated a report 3-year-old girl (then only one year old) had hung herself with a chain link dog collar on the handle of a foosball table. Three-year-old girl was hospitalized. Mother stated she had

fallen asleep when it happened. The doctor stated it was “possible but not likely that the child’s injury was self-inflicted given her level of development.” The children were taken into protective custody, but SSA decided not to file a petition, and released the children to Mother who accepted voluntary family services from June 2007 to March 2008. Mother received cash aid, a housing voucher, funds from CalWorks, and an in-home parent education program.

Only six months had passed before school personnel observed 9-year-old boy’s injuries in September 2008. Eventually, 9-year-old boy gave more details about the beating and past incidents of abuse. Nine-year-old boy recalled being hit in the past for stealing food from the refrigerator. Five-year-old girl reported Mother hit all the children with the belt when they did something wrong. She recalled once seeing blood after Mother hit her buttocks. Five-year-old girl stated Mother “whips” her when she “pees her pants or panties.” She stated 3-year-old girl was also whipped with the belt when she had accidents.

The children were placed in foster care, and the foster parents reported all the children were doing well except 9-year-old boy, and 5-year-old girl had bed-wetting incidents after visits with Mother. In subsequent reports, both the foster mother and foster care social worker expressed concern about the children’s deteriorating behavior following visits with Mother and Father. Three-year-old girl was observed to sit in the corner and cry after visits. She would have nightmares and ask to sleep with the foster mother the night after visits. Two-year-old girl would become aggressive toward other children after visits. Five-year-old girl began telling the foster mother stories about all the children being locked up and starving in their rooms at night. Her bed-wetting increased after visits with Mother and Father.

Mother admitted she hit 15-year-old boy when he was eight years old but stated the child was “gang banging” and associated with the “Crips.” She expressed concern about 9-year-old boy’s injuries and opined they must have occurred at the

after-school program “because it did not come from me.” Mother requested counseling for 15-year-old boy and 9-year-old boy because she believed they had problems with lying and stealing.

At the hearing, 9-year-old boy testified first. He said Mother would punish him if he did not do his chores and Mother locked him in his room at night so he could not eat more food. Fifteen-year-old boy testified next. He admitted lying to the social workers and the police after he was detained. He explained Mother repeatedly had told him to “deny everything” if anyone came to the house. During his childhood, Mother often threatened she would leave the children in foster care, telling them they would be abused and “dirt poor” there. Mother told her children that everybody in the foster system was not given the chance to grow up and be successful in life. At Orangewood, Mother warned 15-year-old boy that if he wanted “a good life,” he should deny everything. He said he lied about the beatings to protect his siblings from the foster system. However, after living for two months with a loving foster family, 15-year-old boy explained he had changed his mind and wanted to come to court and finally tell the truth about what happened. He stated, “I’m telling the truth now because I know that the things my mother was doing to us are not the right things.” Fifteen-year-old boy stated he now realized Mother had lied about the foster system, and after being with a family that was affectionate and caring, “I saw that this is what me and my brothers and sisters need and we don’t need to go back with her.” Fifteen-year-old boy clarified he was “not angry at her, but I just know that the things she’s doing is [*sic*] wrong.”

Fifteen-year-old boy stated Mother frequently beat him and his siblings and the abuse started when he was seven or eight years old. He said Mother also verbally abused them, and she would often call them derogatory names. She called all the children bastards because their fathers were never involved in their lives. Mother also frequently called them her “mistakes.” Fifteen-year-old boy remembered being taken into protective custody in Arizona after his friend’s mother saw red belt marks on his

back and arms. He said Mother stopped hitting them with objects while she was being supervised by social services in Arizona, but the “whoopings” resumed after social services stopped making home visits.

The court agreed with the social worker’s conclusion Mother used excessive discipline on the children and Father had an alcohol abuse problem. In December 2008 the court issued its jurisdictional and dispositional findings which, with respect to Mother, were affirmed by this court in August 2009.

In January 2009, the minors were placed with T.S. in Arizona. Five-year-old girl remained placed with her father (R.S.) and step mother (Trish) in Arizona. Soon thereafter, the juvenile court held a case plan review and added a 52-week child abuse treatment program to Mother’s case plan over her objection. The court concluded Mother’s long history of abusing the children, and past failures with voluntary services, warranted a more intensive treatment program than could be found through counseling and parenting classes. It stated, “[T]he court is unconvinced that Mother would merely take general counseling and understand the gravity of the facts that were revealed in the courtroom. I do agree with the minors’ counsel that Mother’s behavior would be more likely characterized as cruel as opposed to just maybe abusive. [¶] Mother systematically abused the children, oftentimes very, very cruelly, and those children were left with emotional scars, at minimum, [from] those events. . . . Mother does not recognize those actions and, in fact, doesn’t believe that the children are telling the truth and has advocated that the things have not occurred. [¶] So serious efforts would have to be made to address those issues”

In a report prepared for the six-month review hearing, the social worker recommended the court continue Mother’s family reunification services. The children moved to Arizona in January, and Mother visited them only one time before she moved there in mid-March. From March to May, Mother’s visits with the children were

sporadic and inconsistent. In May, Mother's visits became more consistent and at the end of the month she was authorized to have two hours of unmonitored visitation per week.

While in California, Mother completed a parenting program. The instructor reported Mother actively participated in class and was eager to learn. The instructor believed Mother had internalized the concepts that were reviewed in class due to Mother's high level of participation. Mother was scheduled to begin individual counseling in March, but she relocated to Arizona that month. Mother enrolled in the child abuse program through C.A.R.E. Counseling Centers on February 10, 2009, but she was only able to attend three sessions before moving to Arizona.

In Arizona, Mother found her own services. She enrolled in a 16-week anger management group through the Potter's House. After being in the program for two months, Mother's counselor reported Mother was doing very well. She attended and actively participated in the classes. She demonstrated excellent insight and encouraged others to participate. Mother also attended individual counseling sessions on a weekly basis, where she was showing a willingness and a high motivation to learn new coping skills. The social worker reported Arizona did not offer a 52-week child abuse program. Mother's counselor reported the anger management class was the most similar type of program Arizona could offer.

During a visit on May 28, 2009, Mother expressed concern that 5-year-old girl was not bonding with her or her siblings. Mother stated the child interacted with her half-siblings on her father's side of the family. The child's step mother, Trish, reported the child was having some difficulty adjusting, and after the first couple of visits with Mother, the child experienced an increase in enuresis. The following month (June 2009) Trish reported the frequency of the problem had declined and the child appeared to enjoy visits with Mother.

In July 2009, Mother completed her anger management program. The counselor gave a positive report about Mother's attendance, motivation, and efforts. The

social worker increased Mother's weekly visits from two to four hours. Mother was making good progress in her individual therapy. However, Mother and Trish were no longer getting along. The women exchanged lengthy e-mails airing their conflict, but during a visit on July 17 Mother reported R.S. and Trish verbally attacked her in the presence of two children. The social worker recommended future visits take place at a police station to minimize conflict between the parties.

On July 22, 2009, the social worker initiated an ICPC (Interstate Compact for the Placement of Children) of Mother's home. The following day the court held the six-month review hearing. The court accepted the proposed orders and findings submitted by the parties with respect to the minors. The court stated it had considered the social worker's reports and asked if counsel wished to be heard. Mother's counsel provided the court with Mother's current address. Father's counsel stated he would submit the matter on the reports since Father was absent. As to 15-year-old boy, the court set a permanency hearing. With respect to the minors, the court stated it found a factual basis for the proposed orders and findings. It ordered continued supervision was necessary and returning the children would create a substantial risk of detriment to the physical or emotional well being of the children. The court set a 12-month review hearing date and told Mother that on that date it would consider whether or not to return the children to Mother or develop an alternative permanent plan.

The court next asked if there were any questions, and Mother stated she may have misunderstood, but she had completed everything that was requested from her and the case plan. The court stated the case plan included both classes and visitation. It explained that in addition to what she had already done, "we want you to continue to visit so that the relationship just gets better." Mother stated she understood.

As for 5-year-old girl, the court stated it had a stipulation from the parties. The court ordered this child would remain placed with R.S. and continued supervision was necessary. The court amended the case plan to increase visits with the minors and

5-year-old girl. In September, Mother filed an appeal challenging the sufficiency of the evidence.

II

County counsel argues Mother forfeited her claim of error by stipulating to the court's order below. We have reviewed the record and do not find any express stipulation as to the minors. Mother's counsel placed her initials on the proposed orders and findings, but the boxes used to signify a stipulation were not checked. The court noted there was only a stipulation with respect to 5-year-old girl. On the record, the court reached the conclusion the evidence supported the proposed findings and orders as to the others.

Although Mother did not object to the social worker's recommendation, or request the children be returned to her care, these omissions would not necessarily preclude her from challenging the sufficiency of the record supporting the trial court's findings and orders. At the six-month review hearing, "there is a statutory presumption that the child will be returned to parental custody unless the court finds by a preponderance of the evidence that 'the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor.' The department of social services, not the parent, bears the burden of establishing that detriment. (§§ 366.21, subds. (e), (f), 366.22, subd. (a).)" (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249, fn. omitted.) Accordingly, Mother had no duty to present evidence, request return, or object to the sufficiency of the evidence at the hearing.

In any case, we conclude the orders must be affirmed because they were supported by sufficient evidence. Mother pointed to all the evidence in her favor, which was essentially the list of her accomplishments within the past six months. We applaud Mother for taking the initiative to sign up for services when she moved to Arizona. Her participation in classes is commendable. Her counselors gave her glowing reviews about her level of participation, motivation, and effort. She successfully completed a parenting

and an anger management group class. After a slow start, she had enjoyed three recent months of consistent visits with the minors and 5-year-old girl. Mother noted the social worker did not articulate any potential risk of harm in the reports.

Nonetheless, we find the entire record (beyond just the past few months) detailing the nature and severity of child abuse occurring in this case speaks for itself. Noticeably absent from Mother's brief is any discussion of the gravity of the problem Mother must overcome, or any consideration of the fact services in the past were unsuccessful. At the jurisdictional/dispositional hearing, the court noted the excessively cruel nature and seriousness of the abuse (physical and emotional), the history of unsuccessful services, and Mother's denial of wrongdoing, required an intense 52-week child abuse program. We appreciate Mother was unable to find a year-long program in Arizona. However, the court could reasonably conclude her completion of a mere 16-week anger management group program was simply a good start on the road to becoming a fit parent. Mother was not finished with individual therapy sessions, and she has only just begun the process of healing and mending the emotional trauma she caused her four youngest children. We observe Mother has apparently given up on reunifying with the oldest child, who bravely revealed the truth about their living conditions. (Services as to him were terminated and the court scheduled a permanency hearing. Mother has not appealed.)

Mother claims visits with her are safe, but she glosses over the evidence unmonitored visits are a very recent development. For the first two months of this review period, Mother only visited one time. During the following three months, her visits were sporadic and inconsistent. In May 2009, visits improved and Mother was authorized two hours per week unmonitored visits. At the hearing in July, the court authorized the number of unmonitored hours be increased. It is encouraging to see the number of hours keeps increasing, but the minimal hours also reflects Mother has only begun the process of reunification and gaining back the trust of her children.

As detailed in our prior opinion, all the children were extensively emotionally and physically abused. The court observed, and the record supports, Mother caused but failed to appreciate the deep emotional scars she inflicted. The children were removed from Mother's care in September 2008, and in a June 2009 report the social worker reported the children had all been referred to counseling for assessments. It can be inferred all was not well. In fact, the report specified 9-year-old boy was referred to counseling to work on self esteem and coping skills. Five-year-old girl suffered from an ongoing enuresis problem, which increased when Mother started visiting her more frequently. These fragile children were at substantial risk of detriment to their physical and emotional well being if returned to Mother's care at this time.

III

The orders are affirmed.

O'LEARY, J.

WE CONCUR:

SILLS, P. J.

ARONSON, J.